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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,959

07/08/2005

Ulrich Delius

03/008 K

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7590

03/17/2009

PROPAT, L.L.C.

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CHARLOTTE, NC 28211-2841

EXAMINER

MIGGINS, MICHAEL C

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,959	Applicant(s) DELIUS ET AL.	
	Examiner Michael C. Miggins	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/8/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-13 and 17-20 in the reply filed on 2/6/09 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (EP 0217069, cited by applicant) in view of Vrouenraets (US 4514472).

Hisazumi discloses a smoke-permeable, moisture-resistant, tubular food casing (page 1, paragraphs 1 and 2) said casing comprising a mixture of at least one aliphatic (co-)polyamide (page 13, paragraph 1st full paragraph) and at least one water-soluble synthetic polymer (page 13, paragraph 3rd full paragraph), the water vapor transmission rate of the casing ranging from 40 to 200 g/m²xday (page 4, 1st full paragraph).

Hisazumi fails to specifically disclose the tube is biaxially oriented.

Vrouenraets discloses a tube which is biaxially oriented (column 4, lines 55-68) for the purpose of providing improved strength with no wrinkles.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a tube which is biaxially oriented in

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Hisazumi in order to provide improved strength with no wrinkle as taught or suggested by Vrouenraets.

Hisazumi discloses nylon 6 (page 13, 1st full paragraph, page 14, 1st full paragraph), applicant's recited ranges for polyamide and water soluble polymer (top of page 12) and a copolymer having vinyl alcohol (page 13, 3rd full paragraph).

4. Claims 6-11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (EP 0217069, cited by applicant) in view of Vrouenraets (US 4514472), as applied to claims 1-5 and 18-19 above, and further in view of Loomis et al. (WO 94/16020, cited by applicant).

Hisazumi fails to disclose an additive which influences the optics, haptics, the moisture storage capacity or the peeling behavior.

Vrouenraets discloses an additive which influences the optics, haptics, the moisture storage capacity or the peeling behavior (page 16, lines 19-32, page 17, lines 8-18) in a food packaging (page 22, line 30 through page 23, line 11) for the purpose of providing improved biodegradation (page 16, lines 19-32).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided an additive which influences the optics, haptics, the moisture storage capacity or the peeling behavior in Hisazumi in order to provide improved biodegradation as taught or suggested by Vrouenraets.

Vrouenraets discloses starch as an additive, titanium dioxide as an additive, pasticizer such as glycerol and wherein the additives are up to 20% by weight (page 16, line 19 through page 17, line 35).

5. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisazumi et al. (EP 0217069, cited by applicant) in view of Vrouenraets (US 4514472), as applied to claims 1-5 and 18-19 above, and further in view of Pophusen et al. (US 5747124).

Hisazumi discloses a tubular casing (top of page 17).

Hisazumi fails to disclose that the casing is seamless.

Pophusen discloses a seamless tube for meat casing (column 1, lines 8-15) for the purpose of preventing splitting.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a seamless tube in Hisazumi in order to prevent splitting as taught or suggested by Pophusen.

Neither reference discloses that the casing is shaped into a ring shape. However, it has been found that a mere change in shape is obvious and well within the level of one of ordinary skill in the art (MPEP 2144) absent clear and convincing evidence of an unexpected result. It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a ring shaped casing to accommodate large ring shaped sausages and/or aesthetics.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-13 and 17-20 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10555168. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-20 of copending application 10555168 encompass the scope of instant claims 1-13 and 17-20.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/
Primary Examiner, Art Unit 1794

MCM
March 15, 2009